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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 ROSANNA M. PEREZ, an  
13 individual,

14 Plaintiff,

15 vs.

16 VITAS HEALTHCARE  
17 CORPORATION OF  
18 CALIFORNIA, a Delaware  
corporation; VITAS HEALTHCARE  
CORPORATION, a Delaware  
corporation; and DOES 1 through  
50, inclusive,

19 Defendants.  
20  
21  
22

Case No. 2:16-cv-01681 DSF (AJWx)  
Hon. Dale S. Fisher – Dept. 7D

**DEFENDANTS' REPLY TO  
PLAINTIFF'S OPPOSITION TO  
DEFENDANTS VITAS  
HEALTHCARE CORPORATION OF  
CALIFORNIA AND VITAS  
HEALTHCARE CORPORATION'S  
MOTION FOR SUMMARY  
JUDGMENT OR, IN THE  
ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

[Filed concurrently with Defendants'  
Reply to Plaintiff's Statement of Genuine  
Disputes; Defendants' Objections to  
Plaintiff's Evidence; and Defendants'  
Reply to Plaintiff's Objections to  
Evidence]

23 **DATE: March 27, 2017**  
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25 **DEPT.: 7D**

26 State Court Case No: BC608926

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1 **I. INTRODUCTION**

2 None of Plaintiff Rosanna Perez’s additional 216 *immaterial* facts<sup>1</sup> or cases  
3 in her Opposition alters the conclusion that VITAS cannot be liable for failing to  
4 provide an accommodation or related claims. The *undisputed material* facts still  
5 prove that VITAS did not breach any duty to accommodate Perez after her surgery  
6 because Perez (1) returned to work with no limitations/restrictions, (2) failed to  
7 identify any limitation/restriction needing accommodation at that time, and (3)  
8 failed to request an accommodation. With respect to her discrimination claims,  
9 Perez has admitted that she has no evidence that the two individuals who made the  
10 decision to eliminate her position had any knowledge of her alleged disability.  
11 Each of these bedrock issues are confirmed by Perez’s own undisputable deposition  
12 testimony:

- 13 • Perez testified that since her thyroid surgery, none of her physicians has  
14 informed her that she had limitations or was unable to perform her job as  
an Admissions Liaison (Pl. Dep. 111:9-11; 112:17-20);
- 15 • Perez testified that she felt that she could perform the essential functions  
16 of her job “100 percent” and did not request an accommodation (Pl. Dep.  
93:15-24);
- 17 • Perez admitted she *never* told Raymund Villaluz or Jo Ann Mack that she  
18 had thyroid cancer, surgery, or needed an accommodation (Pl. Dep.  
97:19-21; 101:12-13, 21-102:7);
- 19 • It is irrefutable that Villaluz and Mack – the sole termination decision  
20 makers – had no knowledge of any alleged disability. (Mack Dep. 52:6-  
21 17, 54:11-55:12; Villaluz Dep. 30:21-24; 36:15-17, 22-37:11; 45:2-7,  
48:3-7). Perez again has adduced absolutely no evidence to the contrary.

22 Based on this, Perez simply cannot establish a *prima facie* case for failure to  
23 accommodate or related disability discrimination claims. Even if she could, her  
24 claims still fail because she has no evidence that VITAS’ stated reason for  
25 eliminating her position was false or evidence of pretext. VITAS’ motion for  
26 summary judgment should be granted in its entirety.

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27 <sup>1</sup> Indeed, as discussed in VITAS’ Reply Statement, all such “disputes” are illusory,  
28 immaterial, and/or unsupported by the required evidence.

1 **II. PEREZ’S CLAIM FOR FAILURE TO ACCOMMODATE FAILS**  
2 **BECAUSE VITAS’ DUTY TO ACCOMMODATE NEVER AROSE**

3 **A. The Undisputed Evidence Proves That Perez Returned To Work**  
4 **With No Restrictions Or Limitations And Did Not Request An**  
5 **Accommodation**

6 Perez cannot proceed with any disability-related claim unless she can  
7 establish that she had a limitation or restriction and requested an accommodation.  
8 *See, e.g., Avila v. Continental Airlines, Inc.*, 165 Cal. App. 4th 1237, 1252-1253  
9 (2008) (“the duty of an employer reasonably to accommodate an employee’s  
10 handicap does not arise until the employer is aware of [employee]’s disability and  
11 physical limitations.”); *Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 54  
12 (2006). Perez cannot dispute that even when she returned to work after her thyroid  
13 surgery, she returned with a doctor’s note stating she had no restrictions or  
14 limitations. (UF 13; Declaration of Rosanna Perez in Support of Opposition to  
15 Motion for Summary Judgment [“Perez Decl.”], ¶ 24, Ex. 37; Pl. Dep. 93:15-24).  
16 At the time she returned to work – and at the time the decision to eliminate her  
17 position was made – there simply was no physical limitation to accommodate.

18 **1. A Vague Need For “Treatment In The Future” Is Not A**  
19 **Limitation, Restriction, Or Adequate Request For Time Off**  
20 **Under California Or Federal Law**

21 Contrary to her own deposition testimony and documentation, Perez’s  
22 Opposition marks the first time she contends that she actually did have a limitation  
23 or restriction when she returned to work from her thyroid surgery (Opp. 12:25-26;  
24 13:26-28) and requested an accommodation for time off. (Opp. 11:27-12:1). Her  
25 sole basis for both is only that she mentioned to Giles, Ayala, and Murray that she  
26 would need “treatment in the future.” (Perez Decl. ¶¶ 25-26; Opp. 11:12-23; 12:25-  
27 13:17).

28 What she described, however, is neither a limitation nor a restriction  
requiring accommodation. Indeed, there was no accommodation she currently  
needed to perform her job. She did not need time off (she had just returned from

1 leave, at her own request, early), and there is certainly no basis to assume that if and  
2 when the need for time off in the future arose, it would not have been made  
3 available to her. Every time Perez had needed time off for any reason related to her  
4 medical care, VITAS had made it available without question. No one had  
5 suggested time off, or even the potential need for time off, was creating any issues  
6 whatsoever. She was never disciplined or cautioned about the use of time off. The  
7 only evidence in this matter – that Perez herself has confirmed – is that Giles  
8 confirmed that VITAS would work through any issues: “Nicole Giles told Ms.  
9 Perez that she went through cancer treatment, was very supportive, told her  
10 everything was going to be okay, and not to worry about work.” (Plaintiff’s  
11 Additional Fact 69).

12 The decision in *King v. United Parcel Service, Inc.*, 52 Cal. App. 4th 426  
13 (2007) is most instructive. In *King*, the plaintiff truck driver was transferred from a  
14 daytime shift to a more demanding evening schedule. *King, supra*, 152 Cal. App.  
15 4th at 434. After he was diagnosed with a blood disorder, he took a five-month  
16 medical leave. *Id.* Upon returning from the leave, the plaintiff presented a note  
17 from his doctor, stating that he was released to perform his regular duties and hours.  
18 *Id.* at 444. The plaintiff was returned to his evening schedule, and later discharged.  
19 He asserted disability-related FEHA claims, alleging that his employer failed to  
20 accommodate his blood disorder. *Id.* at 442-444. The trial court granted summary  
21 judgment on the claims, reasoning that the driver neither made a specific request for  
22 a necessary accommodation nor presented a “concise list of restrictions.” In  
23 affirming summary judgment, the appellate court noted that the plaintiff neither  
24 communicated his disorder-related work limitations to his supervisors nor clarified  
25 his medical restrictions. *Id.* at 443. The court found that the plaintiff’s discussions  
26 with his supervisor were “vague at best” and any “discrepancy over just what  
27 plaintiff said to whom does not, given what is not disputed, rise to the level of  
28 material fact.” *Id.* The court stated: “We agree with the trial court that plaintiff has

1 not sustained his burden of demonstrating a genuine issue of material fact given his  
2 failure to get additional clarification from his doctor . . . and to communicate his  
3 limitations to his supervisors.” *Id.* at 444. Moreover, “given [plaintiff’s] apparent  
4 ability to work them and ‘get the job done’ after his return, it was incumbent upon  
5 him to produce clear and unambiguous doctor’s orders restricting the hours he could  
6 work.” *Id.* at 443.

7 Like the plaintiff in *King*, Perez returned to work after her thyroid surgery  
8 with a note from her doctor stating she had no restrictions or limitations. (UF 13;  
9 Perez Decl., ¶ 24, Ex. 37; Pl. Dep. 93:15-24). Also like *King*, Perez confirmed she  
10 “felt great” and could get her job done “100 percent” when she returned to work.  
11 (UF 14). At the time Perez mentioned to Giles, Ayala, and Murray that she might  
12 need “radioactive iodine treatment *in the future*” (Perez Decl. ¶¶ 25-26) (emphasis  
13 added), she did not know *when* she needed time off, *how much* time off, or even *if*  
14 she needed time off for her future treatment. In fact, she did not know any specific  
15 information about her treatment until *after* her employment with VITAS ended.  
16 Perez states, “At this particular time period, my radioactive iodine treatment had  
17 not been scheduled with the hospital and I did not know how much additional time  
18 off I would need from work. I did not start my radioactive iodine treatment until  
19 December 23, 2015.” (Perez Decl. ¶¶ 27). Perez’s employment ended on  
20 December 11, 2015. (UF 23). Perez could not have possibly initiated an interactive  
21 dialogue (and VITAS could not have responded) because she did not know what  
22 she needed or when she needed it. As in *King*, Perez’s statement that she would  
23 need future treatment is “vague at best” and “far less than what FEHA demands” to  
24 trigger an employer’s duty to accommodate. *King, supra*, 52 Cal. App. 4th at 444.  
25 VITAS is entitled to summary judgment on Perez’s failure to accommodate claim.

26 **2. A Vague Need For “Treatment In The Future” Is Not A**  
27 **Limitation, Restriction, Or Adequate Request For**  
28 **Accommodation Even Under The Cases Perez Relies Upon**

There is no authority to support Perez’s contention that a need for treatment

1 in the future is a limitation in the present. Nor is there authority to suggest that  
2 treatment in future requires an accommodation in the present. Perez's broad  
3 interpretation of the disability accommodation laws is unsupported by even the  
4 cases on which she relies.

5 For instance, the case on which Perez primarily relies, *Soria v. Univision*  
6 *Radio Los Angeles, Inc.*, 5 Cal. App. 5th 570 (2016) presents fundamentally  
7 different facts. There, the court found that the plaintiff actually requested an  
8 accommodation because she specifically told her supervisor that she intended to  
9 have surgery to remove a tumor and needed time off for her surgery in December  
10 (the month following her request). *Soria, supra*, 5 Cal. App 5th at 598-99. In other  
11 words, the plaintiff told her supervisor what she needed (time off for surgery) and  
12 when she would need it (December).<sup>2</sup> Perez, however, did not made any such  
13 specific request. She did not know when she needed time off or even if she needed  
14 additional time off for "future treatment" when she returned to work. Because  
15 Perez did not learn any concerning possible future treatment until after her  
16 employment ended (Pl. Additional Facts 97, 98), there is no possible way that she  
17 told anyone at VITAS what she needed or when she needed it. Moreover, the  
18 plaintiff in *Soria* was ultimately terminated in connection with attendance-related  
19 issues arguably aggravated by her need for time off during treatment. Here,  
20 however, there is no connection between Perez's ultimate need for time off and the  
21 decision to eliminate her position. That decision was unrelated to her time off  
22 associated with prior treatment and, because she had not determined the timing of  
23 future treatment, was unrelated to any potential future need as well.

---

24  
25 <sup>2</sup> Moreover, the supervisor in *Soria* denied the plaintiff's request for time off for  
26 surgery in December because another employee had already requested time off for  
27 an operation in December, which is not the case here. *Soria, supra*, 5 Cal. App 5th  
28 at 598-99. Perez does not (and cannot) dispute that VITAS granted her request for  
paid time off and approved her FMLA leave for her thyroid surgery. (UF 11, 12;  
Pl. Additional Fact 85).

1 Similarly, while Perez cites *Prillman v. United Air Lines, Inc.* to argue that an  
2 employer's "duty to investigate and accommodate an employee with cancer arises  
3 even when the employee has not requested any accommodations" (Opp. 11:16-18),  
4 none of the plaintiffs in *Prillman* had cancer. 53 Cal. App. 4th 935, 940 (1997).  
5 Nor does *Prillman* recognize this heightened duty suggested by Perez. Instead,  
6 consistent with established legal standards, the court explained that "[d]uty of an  
7 employer reasonably to accommodate an employee's handicap *does not arise* until  
8 the employer is aware of the [employee]'s disability *and physical limitations*. 53  
9 Cal. App. 4th 935, 949-950 (1997) (internal citations omitted) (emphasis added).  
10 As discussed above, even assuming Perez had limitations or restrictions, Perez has  
11 offered no evidence in Opposition to establish the requisite employer knowledge.  
12 (See Section II.A., *supra*).

13 Perez's remaining cases in her Opposition equally offer her no meaningful  
14 support:

15 • *Alejandro v. ST Micro Elecs.*, 129 F. Supp. 3d 898, 911 (N.D. Cal.  
16 2015) instructs that "[i]t is an employee's responsibility to . . . present the employer  
17 at the earliest opportunity with a concise list of restrictions which must be met to  
18 accommodate the employee." Perez failed to meet this prerequisite.

19 • *Moore v. Regents of University of California*, 248 Cal. App. 4th 216  
20 (2016) also unequivocally holds that "the employee must request an  
21 accommodation" which Perez indisputably did not do. Unlike Perez, the plaintiff in  
22 *Moore* actually told management what she needed (2-3 days off for surgery) and  
23 when she needed it (in April). *Id.* at 228. If anything, *Moore* confirms that had  
24 VITAS assumed some limitation and explored an unneeded accommodation, it  
25 would be regarding Perez as disabled rather than appropriately dealing with her as  
26 someone who stated she had no restrictions. *See id.* at 227, 243 (plaintiff was not  
27 disabled since she stated she "could do her work and her job fine," but the employer  
28 "regarded" her as disabled by imposing an unneeded accommodations like

1 “lighten[ing] [plaintiff’s] load to get rid of some of the stress.”).

2 **3. Any “Disputes” Raised By Perez Regarding The Absence Of**  
3 **Limitations, Restrictions, Or Request For Accommodation**  
4 **Are Artificial Self-Contradictions Because She Has**  
5 **Adequately Requested Time Off In The Past**

6 Not unexpectedly, Perez attempts to manufacture some “dispute” of the facts  
7 concerning the absence of her limitations and request of an accommodation. These  
8 “disputes” are readily false, especially since they rely on contradictions between  
9 arguments Perez makes in her Opposition and admissions she made in deposition  
10 concerning those same issues. *See Kennedy v. Allied Mutual Insurance Co.*, 952  
11 F.2d 262, 266 (9th Cir. 1991).

12 Specifically, Perez labels facts as “disputed” but cites no evidence in support  
13 and ignores VITAS’ evidence that contain quotes from her own deposition  
14 testimony. For example, Fact 15 reads: “Since her thyroid surgery, none of Perez’s  
15 physicians has informed her that she had limitations or was unable to perform her  
16 job as an Admission Liaison.” In support, VITAS cites Perez’s deposition  
17 testimony admitting this fact. (Pl. Dep. 111:9-11; 112:17-20). For ease, Perez’s  
18 exact testimony reads:

19 Q. After you returned to work, did any doctors tell you you had any  
20 limitations to perform your job?

21 A. No.

22 (Pl. Dep. 111:9-11)

23 Q. Okay. And after Vitas laid you off, has any doctor told you that you are  
24 unable to perform your job as admissions liaison?

25 A. Absolutely not, no.

26 (Pl. Dep. 112:17-20).

27 Yet, Perez labels this fact as “disputed” without addressing her deposition  
28 testimony. Similarly, Perez labels as “disputed” the fact that she did not request an  
accommodation without offering any supporting evidence. The veracity of her  
disputes is belied by the undisputed fact that Perez knew how to request time off  
and indeed had taken time off for her thyroid surgery. (UF 11, 12). Had Perez

1 actually believed she had a limitation/restriction or needed time off for future  
2 treatment when she returned to work, there is no reason to believe that she would  
3 not have followed the same steps she had previously taken. Indeed, it is undisputed  
4 that VITAS has never denied her requests for paid time off to attend doctor's  
5 appointments nor her request for paid time off and FMLA for her thyroid surgery.  
6 (UF 8, 9, 11, 12).

7 A dispute, however, is not genuine simply because the plaintiff labels a fact  
8 as "disputed." Courts have held that "[a] genuine issue of material fact does not  
9 spring into being simply because a litigant claims that one exists." *Del Carmen*  
10 *Guadalupe v. Agosto*, 299 F.3d 15, 23 (1st Cir. 2002). Instead, the plaintiff must  
11 come forth with specific evidence demonstrating that a particular fact is disputed.  
12 *See id.* She has not. Instead, the evidence is clear that Perez did not have any  
13 limitations necessitating an accommodation nor did she request an accommodation.  
14 Perez has offered no evidence to the contrary. *See King, supra*, 152 Cal. App. 4th at  
15 442-444 (granting summary judgment on failure to accommodate claim where  
16 employee's note from doctor did not contain limitations or restrictions). VITAS is  
17 again entitled to summary judgment on Perez's failure to accommodate claim.

18 **B. Because Perez Had No Limitations Or Restrictions And Failed To**  
19 **Request An Accommodation, Perez's 216 Additional Facts Are**  
20 **Immaterial And Irrelevant**

21 Perez has forced VITAS and this Court to wade through pages of "evidence,"  
22 arguments, and statements about how well Perez believed she was performing and  
23 the existence of various unauthenticated job postings she has seen on search  
24 engines, yet fails to set forth *any* evidence to support her disability discrimination-  
25 based claims. Because Perez has failed to set forth a *prima facie* case as set forth  
26 above, it is immaterial whether she satisfactorily performed her duties or whether  
27 VITAS' other programs had job openings. These "facts" provide nothing more than  
28 distraction.

1 **III. PEREZ’S WRONGFUL TERMINATION CLAIMS BASED ON**  
2 **DISABILITY DISCRIMINATION FAIL**

3 **A. It Is Undisputed That Perez Was Not Disabled After Her Surgery**

4 “[A plaintiff] must demonstrate his injury or physical condition . . . makes  
5 ‘difficult’ the achievement of work or some other major life activity.” *Gelfo, supra*,  
6 140 Cal. App. 4th at 47. As detailed in Section II.A.1.-3., Perez was not limited in  
7 any way when she returned to work. Her doctor released her with no restrictions or  
8 limitations and she asserted that she was 100% able to perform and did not need an  
9 accommodation. (UF 13, 14). She did not have a disability that currently required  
10 any accommodation, and thus cannot establish the first element of her claim.

11 **B. It Is Undisputed That Neither Mack Or Villaluz Had Knowledge**  
12 **Of Perez’s Alleged Disability**

13 It is undisputed that neither Mack nor Villaluz – the two decision makers –  
14 knew that Perez had a disability when they made the decision to terminate her  
15 employment. (UF 21). Although Perez labels this fact as “disputed,” she offers no  
16 evidence in support. In fact, Perez concedes in her Statement of Genuine Disputes  
17 that “Plaintiff does not have sufficient information or evidence to know whether  
18 Ms. Mack or Mr. Villaluz did in fact have knowledge about Perez’s disability prior  
19 to her termination.” (Plaintiff Rosanna Perez’s Statement of Genuine Disputes [“Pl.  
20 Stmt.”] Response to UF 21). The absence of any such knowledge – and the absence  
21 of any evidence at this point – is fatal to her claims. Mere “speculation is  
22 insufficient” to establish a claim of discrimination. *Guthrey v. State of California*,  
23 63 Cal.App.4th 1108, 1118 (1998) (rejecting plaintiff’s subjective opinion as basis  
24 for discrimination). Moreover, Perez’s unfounded speculation is completely  
25 contradicted and *proven untrue* by the *actual evidence*:

- 26 • Mack and Villaluz both testified under penalty of perjury that they had no  
27 knowledge of Perez’s thyroid cancer until after her termination. (Mack  
28 Dep. 52:6-17, 54:11-55:12; Villaluz Dep. 30:21-24; 36:15-17, 22-37:11;  
45:2-7, 48:3-7).
- Perez testified that she did not discuss her thyroid cancer with Mack or  
Villaluz. (Pl. Dep. 97:19-21; 101:12-13, 21-102:7).

1 In the face of this evidence, which was adduced in depositions – Perez’s  
2 unsupported speculative theory is simply irrelevant. Absent specific evidence that  
3 those who made the decision to terminate Perez had knowledge of her disability,  
4 Perez cannot make the required showing “that there was a ‘causal connection’  
5 between the employee’s protected status and the adverse employment decision.”  
6 *Mixon v. Fair Employment & Housing Comm.*, 192 Cal. App. 3d 1306, 1319 (1987)  
7 (emphasis added); *see also Raytheon Co. v. Hernandez*, 540 U.S. 44, 55 n.7 (2003)  
8 (requiring evidence that the employer had knowledge of alleged disability); *Trop v.*  
9 *Sony Pictures Entertainment Inc.*, 129 Cal. App. 4th 1133, 1145 (2005) (holding  
10 that “[a]n employee cannot make out a *prima facie* case of discrimination based  
11 upon pregnancy under FEHA in the absence of evidence the employer knew the  
12 employee was pregnant.”). As a result of her and all other witnesses’ deposition  
13 admissions and declarations, Perez cannot establish a *prima facie* case for wrongful  
14 termination based on disability discrimination against VITAS.

15 **C. There is No Evidence That VITAS’ Stated Reasons for Perez’s**  
16 **Layoff Are Pretextual**

17 Villaluz and Mack eliminated Perez’s position after a significant review and  
18 analysis of the Coastal Cities Program’s expenses and declining admissions rate.  
19 (UF 18-20). Perez has offered no admissible evidence that VITAS’ legitimate, non-  
20 discriminatory justifications for Perez’s layoff and the elimination of her position  
21 are pretextual. *See, e.g., Throneberry v. McGehee Desha County Hosp.*, 403 F.3d  
22 972 (8th Cir. 2005) (an employer may deny reinstatement where an employee’s  
23 position was eliminated during FMLA leave, or the employee would have been laid  
24 off or otherwise terminated for reasons unrelated to the leave); *O’Connor v. PCA*  
25 *Family Health Plan, Inc.*, 200 F. 3d 1349, 1354 (11th Cir. 2000) (employee  
26 terminated during leave as part of reduction-in-force).

27 While she questions whether a decision was ever made to eliminate the  
28 Admission Liaison position (Pl. Stmt. 20), her cynicism is contradicted by her

1 concessions and evidence: Perez does not dispute the fact that Villaluz and Mack  
2 “had discussions about the Coastal Cities Program waning in productivity.” (Pl.  
3 Stmt. 18). Nor does she dispute that “Villaluz informed Perez of her position’s  
4 elimination due to the Program’s declining patient census.” Finally, Perez does not  
5 dispute that “the Coastal Cities Program has not employed an Admission Liaison  
6 since her termination.” (Pl. Stmt. Response to UF 23, 24).

7 **D. Perez Fails to Meet Her Legal Burden to Provide Substantial**  
8 **Responsive Evidence of Intentional Discrimination**

9 Even assuming Perez could somehow prove that VITAS’ reasons were false  
10 (which she has not and cannot), she has completely failed to meet her difficult  
11 burden of proving that the real reason was discrimination based upon her alleged  
12 disability. A FEHA plaintiff must prove not only (1) that the defendant’s reason is  
13 false, *but must also* (2) provide substantial responsive evidence of intentional  
14 discrimination to survive summary judgment. *See University of Southern California*,  
15 222 Cal. App. 3d 1028, 1039 (1990); *Guz v. Bechtel Nat’l, Inc.*, 24 Cal. 4th 317, 361  
16 (2000) (requiring “evidence supporting a rational inference [of] intentional  
17 discrimination”). Perez has offered no such evidence that the reason is false. While  
18 Perez relies on VITAS’ job advertisements, the advertisements are either  
19 unauthenticated inadmissible hearsay (from Indeed.com) or irrelevant (for other  
20 positions in other VITAS programs). Moreover, Perez’s own evidence confirms that  
21 the only advertisement for an Admission Liaison position in the Coastal Cities  
22 Program was posted in August 3, 2015, well before Villaluz and Mack determined  
23 the need to downsize the department. (Plaintiff’s Evidence in Support of Opposition  
24 [“Pl. Evid.”], Exs. 56 and 57) It was never filled and never actually pursued by  
25 VITAS. (Pl. Evid., Exs. 56 and 57; Pl. Stmt. Response to UF 23, 24). Thus, Perez  
26 has presented absolutely no evidence, much less substantial responsive evidence, of  
27 intentional discrimination. Without such evidence, summary judgment is absolutely  
28 warranted.

1 Additionally, under the FEHA “[i]t is the employer’s honest belief in the  
2 stated reasons for firing an employee and not the objective truth or falsity of the  
3 underlying facts that is at issue in a discrimination case.” *King, supra*, 152 Cal. App.  
4 4th at 436 (emphasis added); *Guz, supra*, 24 Cal. 4th at 357-58 (as long as the  
5 employer’s proffered termination reason is “nondiscriminatory on [its] face” and  
6 “honestly believed” by the employer,” the reason need not be “wise or correct,” and  
7 will suffice even if determined to be “foolish or trivial or baseless.”). It was Perez’s  
8 burden to set forth specific substantial evidence to prove that there was intentional  
9 discrimination to avoid summary judgment. She has failed. Thus, summary  
10 judgment is appropriate.

11 **IV. PEREZ’S CLAIM FOR BREACH OF IMPLIED COVENANT FAILS**  
12 **BECAUSE THERE IS NO EVIDENCE THAT VITAS VIOLATED**  
13 **ANY TERM OF ANY AGREEMENT WITH PEREZ**

14 As confirmed by her Opposition, Perez’s claim for breach of implied  
15 covenant of good faith and fair dealing is completely derivative of her  
16 discrimination-based claims. (Opp. 25:12-18). Since, for the reasons previously  
17 stated, Plaintiff’s discrimination-based claims fail as a matter of law, this derivative  
18 claim must also fail.

19 **V. CONCLUSION**

20 Perez’s Opposition does not establish the fundamental prerequisites to her  
21 claims. Considering this complete factual and legal inability, VITAS respectfully  
22 requests that the Court grant this motion and enter summary judgment.

23 Dated: March 13, 2017

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